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SEP 23 2008

In re Application of
Manchester et al.
Application No. 10/806,369
Filed: March 23, 2004
Docket No. 225672

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: **OFFICE OF PETITIONS**
: **DECISION ON PETITION**
:
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This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 2, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed January 18, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, the application became abandoned on April 19, 2008. A Notice of Abandonment was mailed July 29, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of \$1,540.00, and (3) an adequate statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$2,230.00 five month extension of time fee submitted with the petition on September 2, 2008 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to petitioner's credit card in due course.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must notify the Office.

The Power of Attorney submitted on July 6, 2005 was not accepted as it does not comply 37 CFR 3.73(b). 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) **the submission establishing ownership must be signed by a party authorized to**

act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office.

The Statement under 37 CFR 3.73(b) submitted concurrently with the Power of Attorney was signed by a registered practitioner. A power of attorney (37 CFR 1.32(b)(4)) to a patent practitioner to prosecute a patent application executed by the applicant or the assignee of the entire interest does not make that practitioner an official of an assignee or empower the practitioner to sign the submission on behalf of the assignee. See MPEP § 324(V).

While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

This application is being referred to Technology Center AU 2153 for appropriate action by the Examiner in the normal course of business on the reply received.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

cc: William J. Kramer
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